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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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In re RIPPLE LABS INC. LITIGATION,

Case No.: 4:18-CV-06753-PJH (RMI)

Formerly Consolidated/Related

Case No. 4:21-cv-06518 (Close 9-27-21)

**NON-PARTY GSR MARKETS, LTD.’S
79-5(f)(3) STATEMENT IN SUPPORT OF
SEALING CERTAIN CONFIDENTIAL
INFORMATION FILED BY PLAINTIFF**

This Document Relates To:

ALL ACTIONS

Pursuant to and in compliance with Civil Local Rule 79-5, Non-Party GSR Markets, Ltd. (“GSR”) submits this Local Rule 79-5(f)(3) Statement in Support of Sealing Portions of Certain Information Filed By Plaintiff: specifically, a Declaration provided to Plaintiff in this action by one of GSR’s principals (the “Declaration,” Dkt. 181-64).

The Declaration identifies the declarant and his city of residence and contains commercially sensitive information. None of this information bears on the outcome of this action; in particular, the declarant’s right to privacy heavily outweighs disclosing personally identifiable information. GSR respectfully requests that the Court continue to seal both the

NON-PARTY GSR MARKETS, LTD.’S 79-5(F)(3) STATEMENT IN SUPPORT OF SEALING PORTIONS OF PLAINTIFF’S ADMINISTRATIVE MOTION TO CONSIDER WHETHER ANOTHER PARTY’S MATERIAL SHOULD BE SEALED

1 Declaration and those portions of the parties' class certification briefing (e.g. Dkt. 219, at 6) that
 2 quote from the Declaration. GSR understands that Defendant Ripple Labs, Inc. has previously
 3 moved, independently, to seal the Declaration. And Plaintiff does not oppose GSR's request that
 4 the Declaration remains under seal.

5 **I. LEGAL STANDARD**

6 Civil Local Rule 79-5(c)(1) requires a designating party to explain in a "specific
 7 statement" the legal standard and reasons for sealing a document, including "(i) the legitimate
 8 private or public interests that warrant sealing; (ii) the injury that will result if sealing is denied;
 9 and (iii) why a less restrictive alternative to sealing is not sufficient." Given the non-dispositive
 10 class certification motion¹ at issue, the designating party must make a "particularized showing"
 11 under the "good cause standard of Rule 26(c)." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d
 12 1172, 1179 (9th Cir. 2006) (citations and quotation marks omitted); *see also Apple, Inc. v.*
 13 *Samsung Electronics, Co., Ltd.*, 727 F.3d 1214 (Fed. Cir. 2013) ("[T]he Ninth Circuit has carved
 14 out an exception to the presumption of access to judicial records for judicial records filed under
 15 seal when attached to a non-dispositive motion. Under the exception ... a particularized showing
 16 of 'good cause' under Federal Rule of Civil Procedure 26(c) is sufficient to preserve the secrecy
 17 of sealed discovery documents.").

18 The Court has "broad latitude" under Rule 26(c) "to prevent disclosure of materials for
 19 many types of information, including, but not limited to, trade secrets or other confidential
 20 research, development, or commercial information." *Phillips v. General Motors Corp.*, 307 F.3d
 21 1206, 1211 (9th Cir. 2002) (citations omitted).

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23 ¹ Courts in this district "generally treat motions for class certification as nondispositive,"
 24 unless "denial of class status means that the stakes are too low for the named plaintiffs to continue
 25 the matter." *Circle Click Media LLC v. Regus Mgt. Group LLC*, 12-CV-04000-EMC, 2016 WL
 26 8253802, at *1 (N.D. Cal. Mar. 14, 2016); *In re NCAA Student Athlete Name & Likeness*
 27 *Licensing Litig.*, No. 09-cv-01967 CW (NC), 2013 WL 3014138, at *1 (N.D. Cal. June 17, 2013)
 meaning that the "good cause" standard would apply). Because the lead plaintiff here sustained a
 loss of approximately \$118,100, *see* Dkt. 87 at ¶ 13, the motion for class certification is non-
 dispositive and the "good cause" for sealing standard applies.

1 **II. ARGUMENT**

2 GSR is a non-party to this action. GSR consented to the production in this action of
 3 certain confidential GSR documents previously produced by GSR in another matter, and provided
 4 the Declaration, in the spirit of compromise, in response to a specific inquiry by Plaintiff.
 5 Pursuant to the Protective Order entered in this case, the materials produced by GSR were
 6 designated “Confidential” or “Highly Confidential.” Plaintiff’s Reply in Support of Motion for
 7 Class Certification quoted from the Declaration.

8 As an initial matter, the privacy interests of non-parties, including those of GSR’s
 9 principal, plainly satisfy the “good cause” standard for sealing. *See, e.g., In re Volkswagen*
 10 *“Clean Diesel” Mktg., Sales Practices, and Products Liab. Litig.*, MDL 2672 CRB (JSC), 2016
 11 WL 11807130, at *2 (N.D. Cal. Aug. 24, 2016) (finding a “the disclosure of the non-
 12 party employees’ names would infringe on those individuals’ privacy rights,” which constituted a
 13 “compelling reason for sealing”); *Hunt v. Cont’l Cas. Co.*, 2015 WL 5355398, at *2 (N.D. Cal.
 14 Sept. 14, 2015) (sealing third parties’ names where such information “implicates important
 15 privacy concerns of nonparties – whose names are not relevant to the disposition of this case –
 16 that outweigh the public’s interest in disclosure of these judicial records”); *Music Grp. Macao*
 17 *Commercial Offshore Ltd. v. Foote*, No. 14-CV-03078-JSC, 2015 WL 3993147, at *2 (N.D. Cal.
 18 June 30, 2015) (“Disclosure of [former, nonparty employees’ identities] would infringe the
 19 privacy rights of those two individuals, which constitutes a compelling reason for
 20 sealing.”); *Murphy v. Kavo Am. Corp.*, 2012 WL 1497489, at *1 (N.D. Cal. Apr. 27, 2012)
 21 (“Employees and former employees who are not parties to this litigation have privacy interests in
 22 their personnel information, and in other sensitive identifying information[.]”); *In re NCAA*
 23 *Student-Athlete Name and Likeness Licensing Litigation*, No. 09-cv-01967 CW (NC), 2013 WL
 24 1997252, *2 (N.D. Cal. May 13, 2013) (granting applications to seal agreements involving non-
 25 parties). Declarant’s identity and city of residence have no bearing on the outcome of this case;
 26 as such, declarant’s right to privacy and safety vastly outweighs any benefit gained by disclosure.

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1 The Declaration also contains information regarding GSR's business practices, including
 2 its internal process for trading cryptocurrency on particular exchanges, that is competitively
 3 sensitive, proprietary, and would, if disclosed, grant competitors a window into GSR's trading
 4 methods and strategies. As such, there is good cause to prevent the disclosure of said
 5 information. *See, e.g., Campbell v. Facebook Inc.*, 13-cv-05996 PJH (MEJ), 2015 WL 12965295,
 6 at *2 (N.D. Cal. Oct. 15, 2015) ("good cause" established for sealing documents that would have
 7 disclosed "Facebook's internal processes"); *In re NCAA Student-Athlete Name and Likeness*
 8 *Licensing Litig.*, 09-CV-01967 CW (NC), 2013 WL 3014138, at *2 (N.D. Cal. June 17, 2013)
 9 (sealing exhibits containing trade secrets based on showing of "good cause").

10 Because the Declaration consists of only three paragraphs on a single page, redacting the
 11 competitively sensitive and personally-identifiable information would result in redacting virtually
 12 the entire document. With no less restrictive alternative to sealing, and no objection by the
 13 parties to continued sealing, the Court should maintain the Declaration (and the references thereto
 14 in the parties' briefing) under seal.

15 **III. CONCLUSION**

16 GSR respectfully that the Court maintain under seal both the Declaration and any
 17 references to the Declaration in the parties' class certification briefing.

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1 Dated: April 7, 2023

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